IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6400 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MOHMAD SADAB AMJADKHAN PATHAN

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6400 of 2004

MS SUBHADRA G PATEL for Petitioner No. 1

MS AC RAVAL, AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 26/07/2004

ORAL JUDGEMENT

Leave to amend is granted, by correcting the name of the petitioner, as well as by giving address of

respondent No.1.

2) By filing this petition, the petitioner-detenu has challenged his detention order dated 27-09-2003, by which he is detained under PASA as a "dangerous person". Along with the said order, the petitioner is served with the grounds of detention. In the grounds of detention, there is a reference about solitary criminal case registered against the petitioner vide Gunah register No.15/2003 on 22-4-2003 at D.C.B.Police Station, Surat. The said case is registered under Sections 386, 307 and 120-B of I.P.C. and under the provisions of the Arms Act. The petitioner was arrested by the police authority in connection with that case and thereafter, the petitioner was released on bail but he could not comply with the condition of bail and therefore, it is mentioned in the detention order that the petitioner is still in judicial custody. The detaining authority after considering the aforesaid case and after considering the statements of some witnesses passed the order of detention, which is under challenge in this petition.

3) Ms.Patel, learned advocate for the petitioner submitted that there is a solitary case against the petitioner, which is registered before the D.C.B.Police Station, Surat and on the basis of the same the petitioner is detained. It is submitted by her that this case can be considered to be the case of breach of law and order and the same cannot be treated as a case of breach of public order. It is further submitted that the sole case registered against the petitioner is of 22nd April, 2003 and after a considerable time of about more than five months the order of detention is passed on 27-09-2003. She submitted that in view of the delay in passing the order, order of detention is required to be quashed and set aside, as such delay reflects that the detaining authority was not in a hurry to detain the petitioner. In this behalf, reference is made to the decision of Elesh Nandubhai Patel Vs. Commissioner of Police, Ahmedabad City & Others reported in 1997 (1) G.L.H. 381 wherein this Court has observed in Para 21 as under:-

> "21. In the instant case, the last registered case is of May 20, 1996. The petitioner detenu was granted anticipatory bail by the competent Court. He was also granted regular bail subsequently. The impugned order of detention has been passed on November 05, 1996, i.e. after a delay of

> 5 months and 15 days. It is of course true that the detaining authority has relied on two incidents of 2nd October and 10th October 1996, both unregistered cases. I have gone through the allegations. I fail to understand if the allegations are really of such a grievous nature, why the cases have not been registered against the petitioner. There appeared to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash V. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth v. S.Ramamurthy reported in 1993(2) Suppli. SCC 61."

4) Unfortunately, no affidavit in reply has been filed by the authority explaining the delay in passing order of detention. Therefore, the averment made in the petition in is not controverted by the authority. Under these circumstances, there is no alternative but to set aside the order of detention on the ground of delay in passing the detention order from the date of last incident.

5) For the foregoing reasons, this petition is allowed. The order of detention dated 27-09-2003 is quashed and set aside. The detenu, Mohmad Sadab Amjadkhan Pathan is ordered to be set at liberty forthwith, if he is not required in connection with any other case. Rule is made absolute.

(P.B.Majmudar,J.)

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